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COMMISSION ON HUMAN RIGHTS
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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING POLICIES OF RACIAL DISCRIMINATION AND SEGREGATION AND OF APARTHEID, IN ALL COUNTRIES, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES: REPORT OF THE SUB-COMMISSION UNDER COMMISSION ON HUMAN RIGHTS RESOLUTION 8 (XXIII)

Written statement submitted by the International Federation of Human Rights, a non-governmental organization in consultative status (category II)

The Secretary-General has received the following communication, which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[17 August 1995]

1. The International Federation of Human Rights (FIDH) and its affiliate in Turkey the Human Rights Association (HRA), are extremely concerned at the systematic and massive violation of human rights in Turkey.

2. Human Rights questions of Turkey derive especially from its constitutional and legal framework.

3. The Constitution, which establishes the legal framework of the Republic of Turkey, was drawn up by the generals who came to power by means of the military coup of 12 September 1980 and is totally anti-democratic. This Constitution is based on the protection of the State against its citizen and aims at restricting human rights and fundamental freedoms. It is therefore an obstacle to freedom of expression and association. The restrictions on

association, on trade unions and on the participation of citizens in the administration of the country, are incompatible with human rights and fundamental freedoms. The fact that the institution called "Presidency of Religious Affairs" is provided for in the Constitution has put the State in a position to control and lead religious matters. Under the terms of this institution, only those who belong to one sect of the Islamic religion (the "Sunni" sect) are being served in Turkey. For instance, some 20 million people belonging to the "Alevi" sect are considered as non-existent and are not served. Thus, the State is not impartial in matters of religion and belief. The Human Rights Association's opinion in this regard is that the State should not interfere in religious matters, and therefore this institution, the Presidency of Religious Affairs, must be abrogated. However, if this institution continues to exist, then the State should be impartial towards all religious groups and it should serve all of them, not only the "Sunni" sect of Islam.

4. In the Vienna Declaration and Programme of Action (para. I.8), the World Conference on Human Rights emphasized that democracy is based on the freely expressed will of the people to determine their own political, economic, social and cultural systems and their full participation in all aspects of their lives. The Republic of Turkey has given the National Security Council a constitutional basis. This Council is composed of army commanders, as well as the President and Prime Minister with an extraordinary authority. Despite the fact that the army commanders (the Chief of the General Staff and the Commanders of the land, sea and air forces and of the Gendarmerie) are not elected and even though they do not have any political responsibility, they are empowered to take advisory decisions for the Parliament. Not a single "advisory" decision of the National Security Council has been rejected by the Turkish Parliament to date. This situation means that there are powers which are above that of the people's, and such institutions are in contradiction with democracy.

5. The constitutional system is also in contradiction with the principle of the independence of the judiciary. The Constitution of the Republic of Turkey creates an institution called the "Central Council of the Judges and Public Prosecutors" whose president is the Minister of Justice. In other words, a member of the executive body is the president of this institution. In addition, the Counsellor of the Minister, who is in charge of executive affairs, is also a member of this council. The other five members of this council are the judges. This institution, to which all the civilian judges in Turkey are attached, has a separate budget and secretariat. Its decisions are confidential, and not subject to judicial control. This structure, which removes judicial independence, is not in accordance with the right to a fair trial.

6. Nearly 700 laws, which were put into force by being based upon the Constitution of the Republic of Turkey, such as laws on associations, trade unions and political parties, the Law on Assemblies and Demonstrations, the Law to Fight Terrorism, laws on the establishment and trial procedure of the State security courts, laws on collective agreement and on strikes and lockouts, still continue to exist. Each of these laws, taking its ground from the Constitution, put arbitrary limits on the freedom of expression (art. 19 of the Universal Declaration of Human Rights) in the area concerned. For

example, in all of these laws it is written that "no activity, explanation and propaganda can be carried out against the indivisible unity of the State with its country and nation". In article 8 of the Anti-Terror Law, however, it is written that "no written or verbal propaganda, meeting or demonstration, targeting the indivisible unity of the State, with any kind of aim, method or opinion, can be carried out". In the above-mentioned situation, by saying "with any kind of aim, method or opinion", the principle that "any action which is not clearly defined in law as a criminal act, cannot be punished", is not being applied. It is because of these laws that thousands of people who are scholars, writers and journalists are sentenced or tried before courts.

7. The Republic of Turkey has not signed the International Covenant on Civil and Political Rights or the International Covenant on Economic, Social and Cultural Rights.

8. Despite the fact that article 90 of the Constitution states that international instruments acquire legal status immediately after they are ratified, Turkey, has a judicial praxis, whereby it has not made its interior law in accordance with these instruments and does not take the directly applicable instruments into consideration.

9. According to the laws in force, those detained for political reasons in Turkey can be held in detention for 15 days - 30 days in the region under the Emergency Rule. The length of incommunicado detention and the fact that detainees are refused contacts with a lawyer violate human rights.

10. The legal system with its restricting and penalizing provisions in a total of 152 laws, including in particular article 8, and also articles 6 and 7, of the Law to Fight Terrorism and articles 311, 312, 158 and 159 of the Turkish Penal Code, is not in accordance with the international instruments.

11. Some 15 million Kurds living inside the borders of Turkey are considered as non-existent in the constitutional and legal system. Religious and ethnic discrimination are being maintained in spite of the principle of equality in article 10 of the Constitution.

12. The state of emergency in eastern and south-eastern Turkey is another unusual practice in Turkey. This region where the Kurds form a majority was governed under the Martial Law from 1978 to 1987, and it has been governed under the Emergency Rule since 1987. The children born 17 years ago in this region have not had the opportunity to live in even a minimum of democracy as compared to those born in other parts of the country. The system appears to be permanent even though it is supposed to be temporary.

13. There are 10,000 political prisoners as of June 1995 in Turkey. These people are being held under unsuitable conditions in 22 different prisons in Turkey. The Standard Minimum Rules for the Treatment of Prisoners are not being applied in these prisons. As of the same date, some 165 scholars, writers, journalists, parliamentarians and human rights defenders are in prison (prisoners of conscience). There are some 2,500 people waiting for their conviction to become definite (their files are before the Supreme Court and having regard to the tendency of judicial praxis, we expect their

conviction to become definite) and there are some 5,500 prisoners of conscience whose cases are pending before the State Security Courts.

14. Despite the fact that it signed the Convention against Torture, and that torture is prohibited in its domestic law, torture is widespread and systematic in Turkey. According to the figures of the Human Rights Association in Turkey (HRA) over 1,000 people were tortured in 1994.

15. Similarly, even though the right to property is guaranteed by the constitutional and legal system of Turkey, a total of 2,505 villages were evacuated in the region under Emergency Rule, between 1990 and 1995, 1,244 of them in 1994. This practice, which results in the forced displacement of the Kurdish population has drawn worldwide reaction. HRA has continuously monitored this practice which brought about violations of many rights - not just a single right - of the people from different strata (children, women, old people) and made its reaction publicly known. Having considered the principle of the universality of human rights, HRA also announced that it has opposed the United Nations Conference on Human Settlements (Habitat II) being held in a place in which human rights are intensively violated and the right to property is not respected. (As is known, Habitat II is to be held from 3 to 14 June 1996 in Istanbul.)

16. Like the practice of torture, extrajudicial executions and disappearances in detention are daily practices in Turkey.

17. We want to emphasize the fact that most of the violations of human rights in Turkey derive from the Constitution and the Turkish laws.

18. Therefore, the International Federation of Human Rights and Human Rights Association in Turkey call for constitutional and legal reforms in Turkey, as this is the only way to achieve democracy and human rights in a country.